



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

December 18, 1957

Honorable Raymond W. Vowell  
Acting Executive Director  
Board for Texas State  
Hospitals and Special Schools  
Austin, Texas

Opinion No. WW-327

Re: The authority of the Board  
for Texas State Hospitals  
and Special Schools to  
conduct a timber manage-  
ment program on certain  
property in the Alabama-  
Coushatta Indian Reserva-  
tion, and related ques-  
tions.

Dear Mr. Vowell:

Your opinion request is concerned with the sale of timber from the 3,071-acre tract, owned by the State of Texas in the Alabama-Coushatta Indian Reservation in Polk County.

In our opinion No. WW-43, we reviewed at length the history of Indian legislation in Texas. The 3,071-acre tract was bought by the Federal Government in 1928 for the purpose of enlarging the then existing reservation. Under Public Law 627, Acts of 83rd Congress, 1954, 68 Stat. 768, 25 U.S.C.A., Secs. 721 et seq., the Federal Government was authorized to deed said tract to the State of Texas, to be held by it "in trust for the benefit of the Indians of the Alabama and Coushatta tribes of Texas, subject to such conditions regarding management and use as the State of Texas may prescribe and the disposition of such lands shall be subject to approval of a majority of the adult members of the Alabama and Coushatta tribes of Texas."

In anticipation of the adoption of Public Law 627, the Texas Legislature adopted Senate Concurrent Resolution No. 31 (Acts, 1953, R.S., p. 1078), authorizing the Governor to accept on behalf of the State a transfer of the trust responsibilities of the United States respecting the lands and other assets of said tribes, and authorizing the Governor to "designate the State agency in which such trust responsibilities shall rest, and the agency so designated shall have authority to promulgate rules and regulations for the administration of the trust and the protection of the beneficial interest of the Indians in such lands and other assets." Your Board was designated as the State agency to assume such trust responsibilities.

Your letter states:

"Since acquisition of these lands, this Board has determined that a business-like forest management program should be conducted on this acreage. It is contemplated to harvest marketable timber and do such replanting as necessary in order to carry out this program. Contact has been made with the Texas Forest Service with respect to assistance in carrying out such a timber management program and they have indicated that they could possibly cooperate with us in this effort."

You request our opinion as to (1) whether your Board may conduct such timber management program; (2) whether the approval of the Indian tribes is necessary; (3) whether a portion of the proceeds of timber sales may be used to pay Texas Forest Service for its services and (4) what disposition is to be made of receipts from timber sales and how may same be expended.

It is clear that one main purpose of both the State and Federal governments in effecting this transfer of trust responsibilities was to enable a State agency to develop the timber resources of said reservation. The report of the House Committee considering Public Law 627 is set forth at length in U. S. Code Congressional and Administrative News, 1954, p. 3119. The following is found in the Committee Report:

"The tribal assets consist solely of land upon which there is an excellent stand of timber. In accordance with Sec. 6 of that Act the Secretary of the Interior has an obligation to regulate the operation and management of Indian forestry units on the principle of sustained-yield management. It has been impracticable for the Department of the Interior to do so in the case of the Alabama and Coushatta unit, because its relatively small size and its distance from other Indian forestry units have not warranted the expenditure of funds for such supervision. However, the nearest office of the State of Texas Forest Service, which is seventeen miles from the Alabama and Coushatta Reservation, is conducting various forestry protection and conservation measures with respect to timber lands within the general area surrounding the reservation. . . . The Governor of Texas has taken an active interest in the welfare of these Indians and the protection and development of their timber resource. He has

urged that a complete management program be developed for the utilization and conservation of this timber resource. In the negotiations between representatives of the State of Texas and the Bureau of Indian Affairs the representatives of the State have indicated a willingness on its part to undertake, without cost to the United States, the complete management of the Indian timber land for the benefit of the tribe."

The Committee Report also contains a reference to a unanimous resolution adopted by the Alabama and Coushatta tribes of Texas on February 13, 1953, wherein the tribes voted "to authorize the great State of Texas to assume full responsibility for the management, protection, and conservation of our forest resources by applying to our reservation the policies and practices followed by the State in the management of the State forests."

In 1938 the Alabama and Coushatta Indians adopted a Constitution which was approved by the Secretary of the Interior in accordance with Title 25, Section 476, U.S.C., which provides as follows:

"Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

"In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale,

disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress."

Notice particularly the rights of the tribe under the second paragraph above, as to their approval of the disposition of any tribal assets. The 3,071 acres of land here involved were conveyed to the State of Texas in trust for the Alabama and Coushatta Tribes of Texas under Title 25, Section 721, U.S.C., which reads as follows:

"The Secretary of the Interior is authorized to convey to the State of Texas the lands held in trust by the United States for the tribe of Indians organized and known as the Alabama and Coushatta Tribes of Texas, located in Polk County, Texas; and such tribe is authorized to convey to the State of Texas the lands purchased for and deeded to the Alabama Indians in accordance with an act of the legislature of the State of Texas, approved February 3, 1854, located in Polk County, Texas. All of the lands so conveyed shall be held by the State of Texas in trust for the benefit of the Indians of the Alabama and Coushatta Tribes of Texas, subject to such conditions regarding management and use as the State of Texas may prescribe and the disposition of such lands shall be subject to approval of a majority of the adult members of the Alabama and Coushatta Tribes of Texas."

Title 25, Section 723, U.S.C., provides for the continuation of the Constitution and bylaws of the Alabama and Coushatta Tribes and reads as follows:

"Effective on the date of the proclamation provided for in section 722 of this title, all powers of the Secretary of the Interior or any other officer of the United States to take, review, or approve any action under the constitution and bylaws of the Alabama and Coushatta Tribes of Texas approved on August 19, 1938, pursuant to sections 461, 462, 463, 464--473, 474, 475, 476--478, and 479 of this title, are terminated. Any powers conferred upon the tribe

by its constitution and bylaws that are inconsistent with the provisions of this Act are terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with section 721--728 of this title without the participation of the Secretary or other officer of the United States in such action."

From these statutes it is our opinion that the Federal Government did not intend to grant nor the State of Texas to assume any powers as trustee over said lands not previously exercised by the Federal Government. The lands and all tribal assets are the property of the Alabama and Coushatta Tribes, and any disposition of these assets is subject to the approval of a majority of the Indians. Consequently, it is our opinion that any sale of the timber from said lands is subject to the approval of the tribes and receipts from such sale should be the property of said tribes.

From the foregoing and in the light of the history of the legislation, both State and Federal, it is our opinion that a timber management program involves the disposition of lands and assets of the Alabama and Coushatta Indians and your Board is not authorized to conduct such a program without the approval of said Indians.

As to your remaining questions, we deem it sufficient to say that the whole program should be approved by the Indians including method of selling timber, method of financing program, and disposition of proceeds from sale of timber.

#### SUMMARY

The Board for Texas State Hospitals and Special Schools may not conduct a timber management program on the 3,071-acre tract of land owned by the Alabama and Coushatta Indians, without the approval of said Indians. The program should be submitted to the Indians for their approval and should include the method of financing said program, method and procedure for selling timber, and plan for disposition of all proceeds from the sale of timber.

Very truly yours,

WILL WILSON

Attorney General of Texas

By *Galloway Calhoun, Jr.*  
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Assistant

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APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman  
J. Mark McLaughlin  
Mrs. Marietta McGregor Payne  
Leonard Passmore

REVIEWED FOR THE ATTORNEY GENERAL

By: Arthur Sandlin